

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

HARRY et al,  
Plaintiff

v.

OCWEN LOAN SERVICING, LLC,  
Defendant

\* \* \* \* \*

\* CIVIL NO. 1-16-CV-10895-FDS

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\* BOSTON, MASSACHUSETTS

\* DECEMBER 20, 2017

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TRANSCRIPT OF MOTION HEARING  
BEFORE THE HONORABLE M. PAGE KELLEY  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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Court Reporter:

Proceedings recorded by electronic sound recording,  
transcript produced by transcription service.

1 COURT CALLED INTO SESSION

2 (9:45:35 A.M.)

3 THE CLERK: ...Wednesday, December 20, 2017, and  
4 we're on the record in Civil Case No. 16-10895, Timothy  
5 Harry et al verse Ocwen Loan Servicing, LLC, the Honorable  
6 M. Page Kelley presiding.

7 Could counsel please identify themselves for the  
8 record?

9 MS. SHERWOOD: Good morning, Your Honor. Tina  
10 Sherwood for the plaintiffs.

11 THE COURT: Okay. Good morning, Ms. Sherwood.

12 MR. BEDERTHA: Good morning, Your Honor. Sam  
13 Bedertha on behalf of the defendant, Ocwen Loan Servicing.

14 THE COURT: Okay. Good morning. So we have a few  
15 outstanding motions, and I just want to do a little  
16 housekeeping first.

17 So number 152 that was the motion to compel that  
18 was from so long ago, we still have a little gavel next to  
19 it. I do think I ruled on it on the docket, and I'm just  
20 going to say that that motion was allowed as, stated in  
21 court. And that's just -- it's really my fault we didn't  
22 clear that up on the docket when we had that hearing.

23 So we have a series of motions to quash subpoenas,  
24 and I'll just tell you to kind of cut to the chase. What my  
25 thinking is --

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1 I've read the parties' submissions very carefully  
2 -- and my whole staff has, actually.

3 So I think what I would be inclined to do -- and  
4 I'm happy to hear you on this -- is to deny the motion to  
5 quash the two government agency subpoenas. Because it's my  
6 understanding that, as these motions have evolved, the  
7 agencies -- the AG's office and the Division of Banks -- are  
8 not going to produce privileged material. And that's fine  
9 with the plaintiff, so I don't think a protective order is  
10 in order. It seems to me they're only going to produce  
11 things that are a matter of public record anyway.

12 And I would quash the subpoena to Amber Wilson  
13 simply because I think it's pretty farfetched, given her  
14 affidavit, that she has information that's relevant. The  
15 fact that she says on her Facebook that she -- part of her  
16 job was to create documents, I think her affidavit clears up  
17 that she wasn't fabricating documents or forging documents.  
18 And I just think that's pretty far out there.

19 So, I'll hear either side, and I'm happy to hear  
20 you for as long as you want to talk. So who wants to jump  
21 in?

22 MR. BEDERTHA: I'm happy to, Your Honor, since  
23 they're my motions.

24 THE COURT: Okay.

25 MR. BEDERTHA: Again, Sam Bedertha on behalf of

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1 Ocwen Loan Servicing. I just want to --

2           So I understand what the Court's inclinations are.  
3 My understanding of the attorney general subpoena -- and  
4 that's motion to quash doc. 171 -- is that everything they  
5 have is deemed confidential and privileged under  
6 Massachusetts law. Their CID investigation, which is what  
7 plaintiffs is seeking, by law is deemed to be confidential  
8 and privileged and would only be produced in the event that  
9 the attorney general is involved in some kind of collateral  
10 piece of litigation.

11           So if the Court is going to quash the subpoena to  
12 the extent that it seeks privileged materials, as I  
13 understand it --

14           And I will admit I'm not on the forefront of the  
15 Mass. AG's case with Ocwen. That's an entirely different  
16 law firm.

17           But from what I have heard and understood to be  
18 the case, those CID documents are not to be produced.  
19 They're privileged. They're confidential as between both  
20 Ocwen Loan Servicing and the Commonwealth. I can't speak  
21 for Plaintiffs' counsel and the extent to which she has  
22 communicated with the AG.

23           And I understand the Court's inclination. All  
24 that I would add in support of my client's motion is that  
25 the AG's investigation under the CID does not in any way

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1 involve Ocwen's debt collection practices.

2           And this lawsuit specifically involves an FDCPA  
3 claim. So beyond the privilege, there is the question of  
4 whether the request is unduly burdensome on the party --

5           THE COURT: So but what is your standing to claim  
6 that it's unduly burdensome to some agency which has told  
7 Plaintiff we'll provide you with a subset of these  
8 documents?

9           MR. BEDERTHA: Right. And I think that's where  
10 it's instructive to understand Rule 45 and deciding case  
11 law. Because the prime, number-one factor for determining  
12 whether a subpoena is unduly burdensome is relevance. The  
13 discovery sought has got to be --

14           THE COURT: But shouldn't the AG be saying this is  
15 unduly burdensome?

16           MR. BEDERTHA: I believe under the circumstances  
17 that given that this is an investigation between the AG and  
18 Ocwen Loan Servicing, -- these are the two parties to that  
19 CID -- Ocwen ought to be able to come to court and say to  
20 the Court, "These materials are not relevant to this  
21 litigation."

22           And more importantly, --

23           THE COURT: So you're saying that your client has  
24 some sort of privacy interest in those; not that it's unduly  
25 burdensome --

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1 MR. BEDERTHA: No. No, I'm not --

2 THE COURT: -- to be produced --

3 MR. BEDERTHA: I'm not suggesting that we have --

4 Well, I am suggesting, first, that CID documents  
5 under Massachusetts law in the terms of the Massachusetts  
6 statute are privileged and confidential and not to be  
7 disclosed.

8 What I'm suggesting to the Court under the unduly  
9 burdensome test is that relevancy of the discovery is the  
10 prime factor for consideration of whether the subpoena  
11 causes an undue burden. And if we are to look at the  
12 relevancy of the request on the face of the subpoena alone,  
13 there is no indication that any of the records sought to be  
14 relevant to this case. They're not limited to fair debt  
15 collection practices claims. They're not limited to these  
16 particular borrowers.

17 And under our amended Federal Rules Of Civil  
18 Procedure in 2015 we've shifted away from reasonably  
19 calculated to lead to the discovery of admissible evidence,  
20 and we've moved towards a more conservative standard of it's  
21 got to be relevant and it's got to be proportional to the  
22 needs of the case.

23 THE COURT: But I still do not understand what  
24 standing you have to complain that a subpoena they're  
25 sending to a third party, a government agency, is unduly

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1 burdensome.

2 MR. BEDERTHA: Well, I think if you consider the  
3 word "unduly burdensome," no, it's not a burden on us.

4 But if you consider how courts have interpreted  
5 what it means to be unduly burdensome, then certainly Ocwen  
6 Loan Servicing, as a defendant in this case and someone who  
7 is going to have to raise issue with this particular  
8 discovery, should have the opportunity to come to the Court  
9 and say look at the face of the subpoena.

10 THE COURT: So let's just say they did a FOIA  
11 request for it.

12 MR. BEDERTHA: Of course.

13 THE COURT: Could you object to that?

14 MR. BEDERTHA: No. No, we couldn't.

15 And if they went to the Massachusetts AG and said,  
16 hey, can we have this information, and the AG gives it to  
17 them, "Of course," there's nothing we can do about that. I  
18 suppose we could file some kind of omnibus lawsuit to try to  
19 quash or a protective order.

20 THE COURT: So what difference does it make if  
21 they're using a subpoena? What's that to you?

22 MR. BEDERTHA: Because it's within the confines of  
23 the litigation, because my client is specifically a party to  
24 that CID, and my client ought to be able to raise to the  
25 Court the question of relevancy.

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1           That's relevancy. That's the real issue with all  
2 three of these subpoenas. The question is whether this  
3 discovery sought is actually relevant; and more importantly,  
4 are there other means through which the plaintiff could have  
5 and should have attempted to obtain whatever relevant  
6 discovery they seek to get from the Massachusetts attorney  
7 general; from the Massachusetts Division of Banks; and  
8 thirdly, from Amber Wilson. That's the objection that Ocwen  
9 has raised.

10           I understand the Court's position. I think it's  
11 well taken. But I do think on review of Rule 45, if we're  
12 going to have some kind of determination as to whether there  
13 is relevancy, then it's incumbent upon the plaintiffs to at  
14 least inform the AG, the Division of Banks and Ocwen the  
15 particular relevancy of the information sought to this case.  
16 And if they are pushed to that issue, Your Honor, I would  
17 submit that they can't tell you how or why it's relevant to  
18 this particular case and to their FDCPA claim against Ocwen.

19           What they will tell you through their opposition  
20 and their filing papers is they've heard all of these  
21 terrible things and bad acts about Ocwen. They've read this  
22 in the news. They fill their papers full of that, and  
23 they're saying to the Court look at all the terrible things  
24 that are alleged that Ocwen has done. The plaintiffs ought  
25 to be able to discover all of these terrible things and

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1 bring them over to court here for use in this case.

2 But that doesn't meet the discovery standard.  
3 That's not what the discovery rules allow for. They allow  
4 for relevant evidence proportional to the needs of the case.  
5 And without such determination, there's no reason why the  
6 discovery should be had in the first place.

7 THE COURT: Okay. So what's the relevancy, Ms.  
8 Sherwood?

9 MS. SHERWOOD: Thank you, Your Honor. The  
10 relevancy is that there's a three-prong test under the FDCPA  
11 that we are trying to prove. It is not just limited to loan  
12 servicing and collection of debt; it goes also the third  
13 prong under the FDCPA, goes to the business practices in  
14 accomplishing those goals.

15 The business practices is what has been under  
16 investigation by the banking commission and by the attorney  
17 general -- the Attorney General's Office. The banking  
18 commission has issued a cease and desist order based on  
19 those fraudulent business practices.

20 My client has been subject to fraud, and it has  
21 come out in testimony. And it is all over our amended  
22 complaint; therefore, fraudulent business practices in  
23 servicing my client's loans are very, very important.

24 THE COURT: So what did the people at the AG's  
25 office say to you about your subpoena?

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1 MS. SHERWOOD: They said that they would try to  
2 work with me, to the extent they could, without disclosing  
3 any information they received from Ocwen that is privileged,  
4 and the banking commissioner said the same thing. Neither  
5 one said to me the subpoena is unduly burdensome. In fact,  
6 they seemed kind of used to getting them.

7 THE COURT: And what was the attorney general's  
8 position about the fact that -- the point that defendant's  
9 counsel raises with regard to nothing being public record?

10 MS. SHERWOOD: The Attorney General's Office said  
11 they would not release anything that had not yet become  
12 public record. And that is due, in part, to the lawsuit  
13 they filed in April. They don't want that information out  
14 yet.

15 THE COURT: And so what's your understanding as to  
16 the information that they were going to give you?

17 MS. SHERWOOD: Before these motions to quash I was  
18 ready to go to the next step to see if I could have a look  
19 at the information they have and a discussion as to what we  
20 could use. Because defendant said that there are other ways  
21 for us to get discovery, but as this Court knows, we have  
22 not received any discovery. We have tried to work with  
23 defendant to get documentation, to have answers to  
24 interrogatories. They're not coming up, and that's why we  
25 went to the banking commission and the Attorney General's

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1 Office, because clearly Ocwen had to comply with their  
2 discovery requests. Plaintiffs don't have power of the  
3 banking commission or the Attorney General's Office. And we  
4 do know that information is confidential.

5 We do not know and did not know until we asked the  
6 question how they could help us. They both shared with us  
7 that we have another avenue to go in the legal spectrum of  
8 discovery that we can pursue if we want after they're done  
9 with their compliance --

10 THE COURT: I'm sorry. What do you mean by that?

11 MS. SHERWOOD: After they're done with what they  
12 can do within the confines of the subpoena.

13 THE COURT: And then what?

14 MS. SHERWOOD: That I can then push for open --  
15 having the files opened if I want to.

16 THE COURT: What files are those?

17 MS. SHERWOOD: The discovery files that they have  
18 from Ocwen that led to the latest lawsuit from the attorney  
19 general against Ocwen that was filed in April, and the  
20 discovery they've received -- the banking commission  
21 received in leading up to their cease and desist order.

22 But right now the way my subpoena is written, I  
23 cannot look at any of those documents, and the AG's office  
24 was checking to see if all of the documents they have on  
25 Ocwen fall under the confidentiality rules.

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1 THE COURT: So you don't know right now if the  
2 AG's office would give you any documents. They're looking  
3 at what they have to see is there some subset of documents  
4 that they would allow you to look at?

5 MS. SHERWOOD: Right, in accordance with a  
6 subpoena.

7 THE COURT: Okay. And what about the banking  
8 commission? What did they say to you?

9 MS. SHERWOOD: They said that some of their  
10 documents are absolutely confidential, but I can petition  
11 the Court to have them opened to be looked at. And they are  
12 providing other documents to me that are not confidential  
13 that have been filed against Ocwen. I have not had a chance  
14 to go through those yet.

15 THE COURT: Okay. So I think what I'm going to do  
16 at this point is deny the motions to quash. So that would  
17 be number 170 and 178 from the AG's office.

18 I'm denying the motions to quash documents from the  
19 AG's office and from the Mass. Division of Banks.

20 And what I'm going to say to you is if you are  
21 going to receive any documents from the attorney general --

22 Which I understand you don't know yet if you are;  
23 right?

24 MS. SHERWOOD: That is correct.

25 THE COURT: Okay. If you are, the documents that

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1 you do receive you may review them to see if they're  
2 relevant to this case, and I want you to keep those private.

3 MS. SHERWOOD: Thank you, Your Honor. I promise.

4 THE COURT: Okay. So those are for attorney's  
5 eyes only.

6 And if you decide that they're relevant and you  
7 want to share them with your clients or use them in some  
8 way, then we will deal with how you do that.

9 So I'm allowing you to go forward with the  
10 subpoena. Whatever it is they give you, I'm going to count  
11 on the agency to obey the law concerning what it's able to  
12 give you and what it's not able to give you. And if you  
13 receive documents, attorney's eyes only until you petition  
14 the Court to use them.

15 MS. SHERWOOD: Thank you.

16 THE COURT: And we'll deal with it at that time.

17 Yes, sir?

18 MR. BEDERTHA: May I suggest that to the extent to  
19 which Plaintiffs' counsel receives those documents, that we  
20 are permitted to receive and review those documents in  
21 camera? It would not be part of discovery, but would at  
22 least be provided to us as well, given that we're a party to  
23 this suit.

24 THE COURT: Well, sure. Although, if she is going  
25 to their office and looking through materials to see what is

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1 relevant and what isn't, I'm not going to force her to hand  
2 over to you everything she looks at. But if she finds  
3 something that she thinks is relevant and wants to use,  
4 absolutely she's going to need to share it with you and then  
5 ask the Court to use it, and you can raise an objection at  
6 that time.

7 MR. BEDERTHA: Well, why -- but if she goes to the  
8 Attorney General's Office and sits down and looks at a whole  
9 bunch of documents and decides there are things that she  
10 wants to use and things that she doesn't want to use, why  
11 wouldn't we have the opportunity to see the things that she  
12 decides she doesn't want to use?

13 MR. BEDERTHA: Well, you're welcome to go and look  
14 at the documents too, but I'm not going to put the onus on  
15 her as she's trying to look through a bunch of documents to  
16 see what's relevant and what isn't to copy every single  
17 document she looks at and provide it to you. No, I'm not  
18 going to do that.

19 MR. BEDERTHA: So then the mechanism for once  
20 she's looked at these documents, she would come back to the  
21 Court and propose that this set of documents would be  
22 relevant to the litigation? Is that your intention?

23 THE COURT: Yes. I mean, I'm presuming the  
24 Attorney General's Office is going to follow the law with  
25 regard to privileged documents or not. And it's not up to

1 me to just shut the door to the Attorney General's Office  
2 because some of those documents may be privileged. So I  
3 think we can deal with that down the road if she finds  
4 something that is relevant.

5 MR. BEDERTHA: Okay.

6 THE COURT: I mean, you're welcome to go too and  
7 look at everything they have. But I'm not going to put a --

8 I mean, I think she has a right to see what  
9 they're able to show her and see if there's something she  
10 can use in this litigation.

11 MR. BEDERTHA: Understood.

12 THE COURT: And the same with the Mass. Division  
13 of Banks. Okay?

14 MS. SHERWOOD: Thank you, Your Honor.

15 THE COURT: Now, just explain to me why is it  
16 necessary for you to question Amber Wilson, to depose her?

17 MS. SHERWOOD: Your Honor, the reason this  
18 employee -- former employee we want to depose is because of  
19 her job description, how she posted it on social media.

20 And I did hear your words, Your Honor. And I'm  
21 very concerned about the affidavit she signed, because I'm  
22 concerned about how much influence she had from Defendant's  
23 counsel as to what Defendant wanted her to clean up in how  
24 she viewed her job.

25 We do know that documents have been forged, and

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1 this employee in her own words of how she viewed her job is  
2 what prompted us to say we already know there are forged  
3 documents out there. My clients testified at their  
4 deposition they had forged signatures on documents. We know  
5 that another application was forged.

6           Why we want to interview Amber Wilson is she has  
7 come out on social media saying she created documents. If I  
8 interview her and --

9           And I'm very concerned now about the deposition  
10 because of the influence of Hinshaw --

11           THE COURT: Well, if she testifies at the  
12 deposition consistently with her affidavit, there's nothing  
13 there.

14           MS. SHERWOOD: Exactly. But I want to hear it  
15 from her own words. I want to be able to ask her --

16           THE COURT: Yeah --

17           MS. SHERWOOD: -- questions about how she viewed  
18 her job, how big was the department, what training did she  
19 get. Before this job she was working at Target, so now  
20 she's doing title search? What training did she get? What  
21 was she asked to look for?

22           THE COURT: Since she had absolutely nothing to do  
23 with your client's account --

24           MS. SHERWOOD: I don't know that, though, Your  
25 Honor.

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1 THE COURT: Well that's what she has said.

2 MS. SHERWOOD: I understand that. But she has  
3 said that after listening to Hinshaw. After listening to  
4 Hinshaw on the basis of the client Ocwen.

5 THE COURT: Well, let me ask --

6 MS. SHERWOOD: And I'm not saying she's lying, but  
7 I'm saying it might be cleaned up or --

8 THE COURT: Let me ask you this. Have the  
9 defendants made initial disclosures in this case?

10 MR. BEDERTHA: Yes, Your Honor, we have.

11 MS. SHERWOOD: Yes.

12 THE COURT: Okay. And did they tell you who is  
13 the author of these three letters that figure largely in the  
14 case?

15 MS. SHERWOOD: They're not letters, Your Honor.  
16 One of them is actually a foreclosure notice that Ocwen has  
17 engaged in with Deutsche Bank.

18 THE COURT: So do you know everything you need to  
19 about how those documents were generated?

20 MS. SHERWOOD: No, ma'am, I don't, because, Your  
21 Honor, defendant hasn't complied with our discovery  
22 requests.

23 MR. BEDERTHA: Your Honor, that's --

24 MS. SHERWOOD: I've received nothing.

25 MR. BEDERTHA: -- just not true.

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1 MS. SHERWOOD: It is true.

2 MR. BEDERTHA: I'm sorry to interrupt.

3 THE COURT: Okay.

4 MR. BEDERTHA: It's not true.

5 THE COURT: Well, to me, the fact that you're  
6 going on social media and kind of scouring the Internet for  
7 an employee who is utterly unrelated to the servicing of  
8 your loan or the origination of your loan, and based on I  
9 think an inartfully-worded phrase she put on social media  
10 that she created documents, you've latched on to that, and  
11 then that becomes the keystone of your case. To me, it just  
12 is clear you don't have enough information about your case.

13 So do you have all the information about the  
14 servicing of your loan that you've requested?

15 MS. SHERWOOD: No.

16 THE COURT: What information do you not have that  
17 you would like to have about the servicing of your loan?

18 MS. SHERWOOD: One of the things I would like to  
19 have are emails related to my plaintiffs regarding internal  
20 communications from Ocwen Loan Servicing regarding the  
21 intent and the thought process behind how my clients were  
22 treated. I've asked for those emails. It's been deemed  
23 burdensome on Ocwen to produce them.

24 THE COURT: So --

25 MS. SHERWOOD: I've asked for the minutes --

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1 I'm sorry, Your Honor.

2 THE COURT: Excuse me. Is there a way to just run  
3 these people's names through your email?

4 MR. BEDERTHA: Your Honor, the easiest way to  
5 complete this line of questioning discovery is to conduct a  
6 deposition of an Ocwen loan representative, which we've  
7 suggested to Ms. Sherwood on numerous occasions.

8 THE COURT: Okay, but --

9 MR. BEDERTHA: And we've offered to bring a  
10 representative to the jurisdiction so that Ms. Sherwood  
11 could ask all of the questions that you would normally ask  
12 in an FDCPA case.

13 THE COURT: Okay.

14 MR. BEDERTHA: And Ms. Sherwood has flat out  
15 ignored that request and instead --

16 THE COURT: Well, I don't think she's ignored it,  
17 but I think Ms. Sherwood --

18 MR. BEDERTHA: No, she --

19 But, Your Honor, she has.

20 MS. SHERWOOD: No, I have not.

21 THE COURT: Okay. But Ms. Sherwood, your position  
22 is you need more discovery before you do the deposition.

23 MS. SHERWOOD: Exactly.

24 THE COURT: Okay. Here's what I would like to  
25 propose. How about they provide someone --

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1 Is it just a generic person, or is it someone who  
2 actually worked on this loan?

3 MR. BEDERTHA: That we would provide?

4 THE COURT: Yeah.

5 MR. BEDERTHA: Well, under Rule 30 Ms. Sherwood  
6 would give us topics that she wants testimony for, and we  
7 would designate a witness who would come and testify in  
8 response to the questions that she would have in this case.

9 THE COURT: Okay.

10 MR. BEDERTHA: And quite pointedly, there are  
11 three letters. There are three letters they claim is FDCPA  
12 violations.

13 MS. SHERWOOD: No, that's not true.

14 THE COURT: Well, I will say I think you're both  
15 right about the three letters to some extent. You know,  
16 it's not just the three letters; it's the three letters in  
17 context of the case.

18 MR. BEDERTHA: I will concede that for the Court.

19 THE COURT: Okay.

20 MR. BEDERTHA: But here's the point. The  
21 allegations of the complaint are that American Brokers  
22 Conduit did not exist or was not authorized to issue a loan  
23 in the first place.

24 THE COURT: Okay.

25 MR. BEDERTHA: The allegations also demonstrate

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1 that the plaintiffs received all the money in the loan.  
2 They got the loan. Everybody knows that. The allegations  
3 that they're making right now is that because American  
4 Brokers Conduit did not exist when the loan was originated  
5 or was not authorized to issue loans in the Commonwealth,  
6 that their loan is somehow void, and because their loan is  
7 void, Ocwen Loan Servicing engaged in FDCPA violations when  
8 they sent three foreclosure notices to the plaintiffs.  
9 That's the case.

10           Now, Plaintiffs apparently testified that those  
11 aren't the signatures on their mortgage loan documents now,  
12 and now, despite the fact that they're living on this  
13 property and they got all this money, somehow this loan is  
14 fraudulent.

15           But when you get right down to the meat of this  
16 case, after Judge Saylor dismissed 11 out of 12 counts and  
17 every other defendant to this case, we're talking about  
18 three notices the plaintiffs received. Those are the  
19 operative notices.

20           And the question is whether the mortgage loan was  
21 truly void. And if it was void, did those notices violate  
22 the FDCPA. That's the case. This case doesn't go beyond  
23 that to what Ms. Sherwood is expecting to assume, because  
24 you just can't fit it within the allegations and the cause  
25 of action that remains.

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1           Of course, this may all fit in to the other 11  
2 causes of action, but Judge Saylor dismissed all those  
3 causes of action. What we're talking about --

4           And I realize Plaintiffs disagree with that  
5 decision. I understand that.

6           But for purposes of this case and in terms of  
7 proportionality, we're talking about an FDCPA claim.

8           THE COURT: Okay.

9           MS. SHERWOOD: With all due respect, Your Honor,  
10 if I may speak?

11          THE COURT: Sure.

12          MS. SHERWOOD: I would like the opportunity to  
13 present my case; not the opportunity to have defendant  
14 present my case for me. Defendant can defend their own  
15 case, but they cannot summarize all the goings on in this  
16 case succinctly the way they want to and say that, Your  
17 Honor, that's what the case is about. That's what they want  
18 the case to be about. The case is much bigger than that,  
19 and I am looking for the discovery to prove every single  
20 element of the three prongs under the FDCPA; not just the  
21 first two, which is all the defendant wants to talk about.

22          And yes, they want to bring a Koolaide-drinking  
23 Ocwen employee up here, completely loyal to the company, and  
24 have me put through a set of issues; when, if I had received  
25 discovery and what I've been looking for, my issues might be

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1 better, and they might be more inclusive.

2 THE COURT: Yeah, I mean, I did look at some of  
3 your requests, and I'll just say, for example, interrogatory  
4 No. 1 -- "Who was in charge of the Department responsible  
5 for forging documents?" -- that's not a good request.

6 MS. SHERWOOD: That's fine, Your Honor.

7 THE COURT: I mean --

8 MS. SHERWOOD: But there are good requests in  
9 there.

10 THE COURT: Well, okay. I mean, I think -- I  
11 don't know how you're going to get the information you want  
12 from the company without the company answering. So to me --

13 MS. SHERWOOD: But isn't that their job to answer?

14 THE COURT: Well, yes. But to me, the simplest  
15 kky is to get -- have a 30(B) deposition with someone who  
16 knows the company's policy, and you can ask that person have  
17 there been other complaints of forgery, of people in your  
18 company forging customer's signatures? Has anyone ever --  
19 have you gotten in trouble for that? Has anyone ever  
20 accused you of that, and what are those cases?

21 I mean, if you have -- provide them with a list  
22 beforehand, and then you get -- and I'll say since you're  
23 saying you don't have enough discovery --

24 MS. SHERWOOD: I don't.

25 THE COURT: -- to do that, then you can have two.

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1 MS. SHERWOOD: Thank you.

2 THE COURT: Have one. See what follow-up you  
3 want. And if you need to, you can file a motion and ask the  
4 Court for a second 30(B) so you won't be at a disadvantage.

5 But, you know, I will say I've really studied  
6 Judge Saylor's order. And he is your judge here. He's  
7 going to be the one who conducts whatever trial you get to.

8 And I would really urge the parties to go to  
9 mediation and see what you can do, because your clients --

10 You're working away hammer and tong at proving  
11 that this big company has so many bad business practices, et  
12 cetera. But you may well get to trial, and Judge Saylor  
13 just narrows you right down to this case. You're in danger  
14 of that.

15 And I would really talk to your clients about, you  
16 know, seeing is there a way out of this case without  
17 expending a lot more resources on both sides where they get  
18 to keep their home and they can get a good deal on it and  
19 move forward. Because you've worked very hard on the case,  
20 and you're in a pretty good position right now.

21 So I mean, you may sit for hours and hours at the  
22 AG's office and find a lot of stuff about the company that  
23 in the end just doesn't come in at your case, because I do  
24 get a sense from Judge Saylor's order -- I have not spoken  
25 to him at all about the case. But just looking at his order

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1 and what you can glean from it, that he's kind of narrowing  
2 things down to a pretty -- not quite as narrow as defense  
3 counsel would have it, but a pretty narrow dispute.

4 MS. SHERWOOD: I understand that, Your Honor. I'm  
5 just trying to be prepared for all aspects of the  
6 three-prong test.

7 THE COURT: Sure. Well, I think, you know, you  
8 may want to do the deposition and see what further discovery  
9 you can ask for and then reassess. And I think I am --

10 I get confused, because I have quite a few cases  
11 right now. But I think I'm in control of your schedule  
12 here? I don't know. Did I set the dates here?

13 MR. BEDERTHA: I'm not sure that --

14 MS. SHERWOOD: Judge Saylor has set another  
15 discovery --

16 THE COURT: Okay.

17 MS. SHERWOOD: -- date for January 8.

18 MR. BEDERTHA: There's another scheduling  
19 conference that was --

20 THE COURT: Oh, right.

21 MR. BEDERTHA: -- sort of tied to Your Honor's  
22 hearing the last time.

23 THE COURT: I see. Well --

24 MR. BEDERTHA: So he's got another one in January.

25 THE COURT: If you want me to --

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1           If you don't want me to, I won't. If you want me  
2 to, I will contact him and ask him to take that off and let  
3 you do a little more discovery practice here. And then I'm  
4 happy to give the parties whatever time they want to go to  
5 mediation. You know, it might take a couple weeks to get  
6 things in order, get there. You can pick -- if you wanted  
7 to do it here in court, you have to pay for your own time of  
8 course, but it's otherwise free. You can pick any  
9 magistrate judge you want and try to hammer something out  
10 before you expend a lot more money.

11           MR. BEDERTHA: I would prefer to keep Judge  
12 Saylor's conference on in January.

13           THE COURT: Okay.

14           MR. BEDERTHA: I think what one of the -- one of  
15 the issues in this case for us is that we've completed all  
16 the discovery that we need. And I understand Plaintiffs'  
17 counsel's frustration, but I want to keep this case on a  
18 tight schedule in terms of what additional discovery may be  
19 out there or may be needed before we close discovery and can  
20 move to dispositive motions. So if it's acceptable to the  
21 Court, we'd just as soon meet the terms of Judge Saylor's  
22 order.

23           Certainly Ms. Sherwood and I will update the Court  
24 -- and you can, as well -- on what happened here and on what  
25 additional discovery may take place.

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1 THE COURT: Okay. Well --

2 MS. SHERWOOD: The plaintiffs are going to need  
3 additional time to do the 30(B), to be able to have the  
4 deposition, to be able to look through documents they're  
5 requesting with the 30(B), to determine whether or not we  
6 need another 30(B) to narrow down.

7 THE COURT: Okay. Well, I think I will not --

8 I mean, I'm not going to try to influence Judge  
9 Saylor on the schedule, but I'll put in the docket entry for  
10 today that I suggested this in lieu of more paper discovery  
11 that you do the 30(B), and I give you the option to do a  
12 second one, and so he'll be able to see that.

13 So just so the record is clear, Number 170 motion  
14 to quash the AG's office subpoena is denied.

15 172 is denied; although, I have really issued a  
16 protective order of sorts, and I'll put that on the docket.

17 173 is allowed.

18 And 178 is denied.

19 And I'm going to deny both parties' motions for  
20 sanctions at this time. That would be 191 and 198.

21 So, wow. Good luck.

22 MR. BEDERTHA: Thank you, Your Honor.

23 THE COURT: And anything further pertaining to  
24 these motions you can call s. Moore. If you want to engage  
25 in motions practice, that's fine. But you could call

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1 Kellyann Moore, and I'm happy to set up a phone conference  
2 with you, and we can hash things out without having a long  
3 period of time drag by and a lot of back and forth.

4           So in other words, as we're moving forward, if  
5 there are questions about these motions that have been  
6 referred to me or my order today, I'm happy to --

7           You can certainly engage in motions practice if  
8 you want, but if you want to shortcircuit that, email Ms.  
9 Moore, cc the other side, and I'll try to move quickly on it  
10 and keep you rolling. Okay?

11           MS. SHERWOOD: Are you denying the obstruction of  
12 justice, as well, or the influence of defendant counsel with  
13 Amber Wilson?

14           THE COURT: Yes, I'm denying that at this time. I  
15 am. Okay.

16           (Court adjourned at 10:25:22 a.m.)  
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## CERTIFICATION

I, Judy Bond, a court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

  
Judy Bond

January 9, 2018

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